



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2012-0891; FRL-9823-2]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Wisconsin; Removal of Gasoline Vapor Recovery from Southeast  
Wisconsin.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Wisconsin Department of Natural Resources (WDNR) on November 12, 2012, concerning the state's Stage II vapor recovery (Stage II) program in southeast Wisconsin. The revision removes Stage II requirements as a component of the Wisconsin ozone SIP. The submittal also includes a demonstration under section 110(l) of the Clean Air Act (CAA) that addresses emissions impacts associated with the removal of the program.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0891, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).
3. Fax: (312) 692-2450.
4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No.

EPA-R05-OAR-2012-0891. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The

www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air

and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Francisco J. Acevedo, Environmental Protection Specialist, at (312) 886-6061 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061, [acevedo.francisco@epa.gov](mailto:acevedo.francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. Background.
- III. What Changes Have Been Made to the Wisconsin Stage II Vapor Recovery Program?
- IV. What Is EPA's Analysis of the State's Submittal?
- V. What Action Is EPA Proposing to Take?
- VI. Statutory and Executive Order Reviews.

**I. What Should I Consider as I Prepare My Comments for EPA?**

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the close of the comment period.

## **II. Background.**

Stage II programs were adopted by some states beginning in the 1980s to meet the ozone National Ambient Air Quality Standards (NAAQS). Stage II and onboard refueling vapor recovery systems (ORVR) are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling.

Stage II systems are specifically installed at gasoline dispensing facilities (GDF) and capture the refueling fuel vapors at the gasoline pump nozzle. The system carries the vapors back to the underground storage tank at the GDF to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation.

Stage II and vehicle ORVR were initially both required by the 1990 Amendments to the CAA under sections 182(b)(3) and 202(a)(6), respectively. In some areas Stage II has been in place for over 25 years, but was not widely implemented by the states until the early to mid-1990s as a result of the CAA requirements for moderate, serious, severe, and extreme ozone nonattainment areas and for states in the Northeast Ozone Transport Region (OTR) under CAA section 184(b)(2). CAA section 202(a)(6) required EPA to promulgate regulations for ORVR for light-duty vehicles (passenger cars). The EPA adopted these requirements in 1994, at which point moderate ozone nonattainment areas were no longer subject to the section 182(b)(3) Stage II requirement. However, some moderate areas retained Stage II requirements to provide a control method to comply with rate-of-progress emission reduction targets. ORVR equipment has been phased in for new passenger vehicles beginning with model year

1998, and starting in 2001 for light-duty trucks and most heavy-duty gasoline-powered vehicles. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks and heavy-duty vehicles since 2006.

During the phase-in of ORVR controls, Stage II has provided volatile organic compound (VOC) reductions in ozone nonattainment areas and certain attainment areas of the OTR. Congress recognized that ORVR and Stage II would eventually become largely redundant technologies, and provided authority to the EPA to allow states to remove Stage II from their SIPs after EPA finds that ORVR is in widespread use. Effective May 16, 2012, the date the final rule was published in the Federal Register (77 FR 28772), EPA determined that ORVR is in widespread nationwide use for control of gasoline emissions during refueling of vehicles at GDFs. Currently, more than 75 percent of gasoline refueling nationwide occurs with ORVR-equipped vehicles, so Stage II programs have become largely redundant control systems and Stage II systems achieve an ever declining emissions benefit as more ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet<sup>1</sup>. EPA also exercised its authority under CAA section 202(a)(6) to waive certain Federal statutory requirements

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<sup>1</sup> In areas where certain types of vacuum-assist Stage II systems are used, the differences in operational design characteristics between ORVR and some configurations of these Stage II systems result in the reduction of overall control system efficiency compared to what could have been achieved

for Stage II gasoline vapor recovery at GDFs. This decision exempts all new ozone nonattainment areas classified serious or above from the requirement to adopt Stage II control programs. Similarly, any state currently implementing Stage II programs may submit SIP revisions that, once approved by EPA, would allow for the phase out of Stage II control systems.

### **III. What Changes Have Been Made to the Wisconsin Stage II Vapor Recovery Program?**

Wisconsin originally submitted a SIP revision to EPA on November 18, 1992, to satisfy the requirement of section 182(b)(3) of the CAA. The revision applied to the counties of Kenosha, Kewanee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha and was incorporated within the WDNR's 1993-94 ozone 15% Control Plan. EPA fully approved Wisconsin's Stage II program on August 13, 1993 (53 FR 43080), including the program's legal authority and administrative requirements found in Section 285.31 of the Wisconsin Statutes and Chapter NR 420.045 of the Wisconsin Administrative Code.

On November 12, 2012, WDNR submitted a SIP revision requesting the removal of Stage II requirements under NR 420.045 of the Wisconsin Administrative Code from the Wisconsin ozone SIP. To support the removal of the Stage II requirements, the revision included copies of 2011 Wisconsin Act 196 enacted on

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relative to the individual control efficiencies of either ORVR or Stage II emissions from the vehicle fuel tank.



April 2, 2012 authorizing the termination of Stage II requirements in Wisconsin; a summary of MOVES2010b modeling results and Wisconsin specific calculations based on EPA guidance used to calculate program benefits and demonstrate widespread use of ORVR in southeast Wisconsin; and a section 110(l) demonstration that includes offset emission credits. WDNR held a public hearing on the Wisconsin Stage II SIP revision on October 8, 2012, in Waukesha, Wisconsin and allowed for written public comments until October 12, 2012.

#### **IV. What Is EPA's Analysis of the State's Submittal?**

Revisions to SIP-approved control measures must meet the requirements of CAA section 110(l) to be approved by EPA.

Section 110(l) states:

"The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act."

EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. EPA also interprets section 110(l) to require a demonstration addressing all criteria pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. In the absence of an attainment

demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(1), EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, as long as actual emissions in the air are not increased. "Equivalent" emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the SIP. To show that compensating emissions reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emission in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

The Wisconsin Stage II SIP revision includes a 110(1) demonstration that uses equivalent emissions reductions to compensate for emission reduction losses resulting from the removal of Stage II program requirements before ORVR is in widespread use in southeast Wisconsin. WDNR has calculated that by 2016, ORVR will be in widespread use in southeast Wisconsin and the absence of the Wisconsin Stage II program after 2016 would not result in a net VOC emissions increase compared to the

continued utilization of this emissions control technology. The emission reduction losses resulting from removing Stage II before 2016 are transitional and relatively small since ORVR-equipped vehicles will continue to phase into the fleet over the coming years.

WDNR's calculation indicates a maximum potential loss of 0.02 to 0.70 tons per summer day (tpsd) from 2012 through 2015, were the decommissioning of existing Stage II systems to occur completely during a specified year. However, decommissioning is scheduled to occur over a four-year period from 2012 through 2015. This extended period was taken into consideration to account for the costs and timing associated with replacement equipment and the decommissioning cost process. Table 1 below summarizes WDNR's emissions calculations of the yearly emission reduction losses during the Stage II decommissioning period between 2012 and 2015 in tpsd and tons per year (tpy) and highlights the emissions difference that needs to be addressed as part of the 110(l) demonstration.

Table 1 - (VOC Emissions Offsets Needed in Southeast Wisconsin)

	2012	2013	2015
<b>Maximum Potential Loss of VOC Emission Credits (tpsd)</b>	0.67 - 0.70	0.40 - 0.42	0.021 - 0.022
<b>Percent Stage II Throughput Decommissioned</b>	20%	50%	90%

<b>Tons per Summer Day Lost VOC Credit (tpsd)</b>	0.134 - 0.140	0.200 - 0.210	0.019 - 0.020
<b>Tons per Year Lost VOC Credit (tpy)</b>	42.9 - 44.8	64.0 - 67.2	6.1 - 6.4

The implementation of the Stage II program in southeast Wisconsin has resulted in reductions of VOC emissions. VOC contributes to the formation of ground-level ozone. Thus the potential increase in VOC needs to be offset with equivalent (or greater) emissions reductions from another control measure in order to demonstrate non-interference with the 8-hour ozone NAAQS.

On June 6, 2012, the WDNR submitted a SIP revision related to the state's vehicle inspection and maintenance (I/M) program. As part of that submittal, WDNR provided VOC and oxides of nitrogen (NO<sub>x</sub>) emission credits to offset changes to the SIP approved I/M program. These emission credits were from previously permitted emissions sources located in southeast Wisconsin that have permanently shutdown, and whose permits have been revoked. The expiration and revocation of these sources' permits allows the state to use the emission credits associated with them for other purposes under the SIP and makes such credits permanent and enforceable. Table 2 outlines the remaining equivalent VOC emissions credits that are available between 2012 and 2015 that can be used for Stage II.

Table 2 - Available VOC and NO<sub>x</sub> Emission Credits for the

## Stage II Vapor Recovery Program.

<b>YEAR<sup>2</sup></b>	<b>VOC (tons)</b>	<b>NO<sub>x</sub> (tons)</b>	<b>Equivalent VOC (tons)<sup>3</sup></b>
2012	42.02	46.42	53.63
2013	86.07	97.17	110.36
2014 <sup>4</sup>	130.12	147.92	167.10
2015	174.18	198.66	223.85

Table 3 below summarizes WDNR's Stage II emissions make-up demonstration. The table specifically highlights the annual emissions shortfall that will take place during the phase out of the Wisconsin Stage II program between 2012 and 2015. In addition, the table outlines the amount of equivalent VOC emission credits that are being used to offset the shortfall using the VOC to NO<sub>x</sub> conversion approach outlined in EPA's proposed approval of Wisconsin's June 6, 2012 SIP revision (see 78 FR 24373). Based on the use of permanent, enforceable, contemporaneous, surplus emissions reductions achieved through the shutdown of permitted emissions sources, EPA believes that

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<sup>2</sup> 2011 Wisconsin Act 196 enacted on April 2, 2012 authorized the termination of Stage II requirements beginning May 16, 2012, the date when EPA finalized a rule determining that ORVR was in widespread use nationwide. Stage II decommissioning in southeast Wisconsin is set to occur within a four year period between 2012 and 2015.

<sup>3</sup> Based on 4:1 NO<sub>x</sub> to VOC Ratio (*i.e.* 4 tons of NO<sub>x</sub> = 1 ton of VOC)

<sup>4</sup> The VOC emissions shortfall was interpolated between 2013 and 2015 since the MOVES modeling was not done specifically for this year.

the removal of the Wisconsin Stage II program does not interfere with southeast Wisconsin's ability to demonstrate compliance with the 8-hour ozone NAAQS.

Table 3 - Make-up of Stage II Vapor Recovery Program Emissions Shortfall.

<b>YEAR</b>	<b>VOC Emissions Shortfall (tons)</b>	<b>Available VOC Emissions Credit (tons)</b>	<b>Difference (Shortfall-Credit) (tons)</b>
<b>2012</b>	42.9 - 44.8	53.63	-8.83
<b>2013</b>	64.0 - 67.2	110.36	-43.16
<b>2014</b>	47.0 - 49.6	167.10	-117.50
<b>2015</b>	6.1 - 6.4	223.85	-217.45

EPA also examined whether the removal of Stage II program requirements in southeast Wisconsin will interfere with attainment of other air quality standards. Southeast Wisconsin is designated attainment for all standards other than ozone and particulate matter, including sulfur dioxide and nitrogen dioxide. EPA has no reason to believe that the removal of the Stage II program in southeast Wisconsin will cause the area to become nonattainment for any of these pollutants. In addition, EPA believes that removing the Stage II program requirements in southeast Wisconsin will not interfere with the area's ability to meet any other CAA requirement.

Based on the above discussion and the state's section 110(1)

demonstration, EPA believes that removal of the Stage II program would not interfere with attainment or maintenance of any of the NAAQS in both the Milwaukee-Racine and Sheboygan County nonattainment areas and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(1).

#### **V. What Action Is EPA Proposing to Take?**

EPA is proposing to approve the revision to the Wisconsin ozone SIP submitted by WDNR on November 12, 2012, because we find that the revision meets all applicable requirements and it would not interfere with reasonable further progress or attainment of any of the national ambient air quality standards.

#### **VI. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally



permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: June 3, 2013

Susan Hedman,  
Regional Administrator, Region 5.

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